IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 19TH DECEMBER, 2007 / 28TH AGRAHAYANA, 1929

WP(Crl.).No. 238 of 2007(S)

PETITIONER:

SASIKALA, AGED 22 YEARS, W/O. VAISALI @
TAMIL SELVEN, HOUSE NO.M.G.P
111/1499, PAMPANMALA, MARAYOOR,
K.D.H.VILLAGE, IDUKKI DIST.

BY ADV. SRI.A.MOHAMMED

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY TO GOVERNMENT OF KERALA,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

2. ADDL.CHIEF SECRETARY,
HOME AND VIGILANCE DEPT.
GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

3. THE DISTRICT MAGISTRATE, IDUKKI.

4. THE SUPERINTENDENT OF POLICE, IDUKKI.

5. THE STATION HOUSE OFFICER, MAYOOR
POLICE STATION, IDUKKI DISTRICT.

6. THE SUPERINTENDENT, CENTRAL PRISON,
VIYYUR.

BY SR. GOVERNMENT PLEADER SRI.RABINDRANATH.

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 07/12/2007, THE COURT ON 19/12/2007 DELIVERED THE FOLLOWING:

APPENDIX

(WP(Crl) No. 238 OF 2007)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of the Order of Detention No.E5-25768/07 dtd.16.7.2007 issued by the District Magistrate, Idukki.

Ext.P2: Copy of the memo for executing the order of Detention dtd.16.7.2007 issued by the District Magistrate, Idukki.

Ext.P3: Copy of the confirmation order dtd.20.8.2007.

Ext.P4: Copy of the representation dtd.25.9.2007.

RESPONDENTS' EXHIBITS:

Ext.R3(a): Copy of the memo dtd.16.7.2007.

Ext.R3(b): Copy of the order of detention dtd.16.7.2007.

Ext.R3(c): Copy of grounds for detention.

Ext.R3(d): Copy of Confirmation Order dtd.20.8.2007.

-True Copy-

P.A.to Judge.

P.R.RAMAN & V.K.MOHANAN, JJ.

W.P.(Crl).No. 238 of 2007 - S

Dated this the 19th day of December, 2007

J U D G M E N T

Mohanan,J:

The petitioner herein is the wife of one Vaisali @ Tamil Selvan, who is now detained in the Central Jail, Viyyur as per the detention order issued under the provisions of the Kerala Anti-Social Activities (Prevention) Ordinance, 2007 (hereinafter referred to for short as 'KAAPO, 2007' only). According to her, the detention of her husband is illegal and arbitrary and hence she has approached this Court with a prayer to issue a direction directing the respondents to produce the body corpus of the said Vaisali @ Tamil Selvan and to set him at liberty.

2. It is averred by the petitioner that the detention of her husband is illegal. Ext.P1 is the order of detention issued by the third respondent and Ext.P2 is the memo executing the detention order. According to the petitioner, the Government has issued Ext.P3 order by which the detention order issued by the third respondent has been confirmed. According to the petitioner, Exts.P1

and P3 are issued illegally and the same are ultra vires and arbitrary. It is stated that those orders are issued in violation of Article 19(1)(d), 21 and 22 of the Constitution of India and in violation of various provisions contained in the KAAPO, 2007. It is also averred that the detenu has preferred Ext.P4 representation before the Chairman, Advisory Board, Kerala Anti Social Activities (Prevention) Ordinance and no action is taken on such representation till this date. It is submitted by the petitioner that in the matter of personal freedom, the letter of law must be followed strictly and its provisions cannot be watered down due to any mis-conception or mis-construction. According to the petitioner, the procedure adopted by the authorities to confine the petitioner's husband is unjust, unfair and unreasonable. According to the petitioner, Ext.P1 was issued on a pure mis-conception of relevant provisions of KAAPO, 2007. According to the petitioner, the

satisfaction recorded in Exts.P1 and P3 that the petitioner's husband will come within the purview of 'Known Rowdy', and if he remains at large, he would involve in antisocial activities, which would directly cause harm, danger or alarm or a feeling of insecurity among the general public or residents of Perumpallichira area and resulted in grave and widespread danger to life/public health in that area, are absolutely unfounded and without any merits. It is also argued that 'Known Rowdy' history sheet is not opened in the Marayoor Police Station against the petitioner's husband and no security proceedings for keeping peace and good behaviour have been initiated against him. Therefore, the satisfaction expressed in Exts.P1 and P3 is without any basis and the same are issued without application of mind. It is also averred that the petitioner's husband has been already enlarged on bail in the cases pending against him and he has not

indulged in any antisocial activities in Perumpallichira or nearby area. It is also stated that there is no rational nexus between the alleged past acts of the petitioner's husband and the order of detention. It is specifically averred that respondents 3 and 2 are miserably failed to apply their mind in issuing Ext.P1 detention order and Ext.P3 confirmation order. According to the petitioner, the issuance of such orders has caused inexplicable mental agony to the petitioner and her family members.

3. Controverting the allegations contained in the writ petition, the third respondent has filed a detailed counter affidavit. In the counter affidavit, it is stated that the third respondent has received credible information from the Station House Officer of Marayoor Police station vide F.I.R.No.95/07 dated 20.6.2007 through the Superintendent of Police, Idukki against the husband of the petitioner. The said report contained detailed information about the

involvement of the detenu in eight criminal cases and four Forest Act cases. The details of the cases are given separately.

4. Crime No.7/03 registered in the Marayoor Police Station is for offences under Sections 143, 144, 147, 148, 294(5), 323 and 506(1) of the Indian Penal Code occurred on 17.1.2003 and reported on 18.1.2003. The allegation therein is that the detenu along with other seven persons formed themselves into an unlawful assembly with deadly weapons, threatened and assaulted the complainant and inflicted bodily injuries. After investigation, the case was chargesheeted before the Judicial First Class Magistrate Court, Devikulam and the same was received on file and the case was taken as C.C.No.487/2003. There, the accused was acquitted on 16.12.2005.

5. Crime No.83 of 2004 registered in the Marayoor Police Station is for offences under Sections

323, 324, 341 read with Section 34 I.P.C. which was occurred on 30.9.2004. There, the allegation is that the detenu with four others wrongfully restrained and assaulted the complainant one Joy, Son of Antony with stone and inflicted bodily injuries. After the investigation, a final report was filed on the basis of which a case was chargesheeted before the Judicial First Class Magistrate Court, Devikulam as C.C.No.394/04. But the same was compounded under Section 320(8) of the Code of Criminal Procedure on 22.12.2005. Again based upon the incident on 9.2.2005, Crime No.11/05 was registered in the Marayoor Police Station under Sections 143, 147, 148, 332 read with 149 I.P.C. There the allegation is that the detenu along with five others formed themselves into an unlawful assembly, assaulted the complainant Sri.Baby who is the Forester attached to Marayoor Forest Station and others while they were trying to arrest the detenu as he was involved in Forest

Act cases. In that case, the investigation is completed and charge sheet has already been filed before the same court and the case is pending trial as C.C.No.122 of 2005. Crime No.67/06 registered in the Marayoor Police Station is for the offences punishable under Section 294 (b), 341, 323 read with Section 34 I.P.C. in which the incident was taken place on 4.6.2006. There, the allegation is that the detenue and two others wrongfully restrained the complainant, uttered abusive words and assaulted him and inflicted bodily rips. There also after investigation, a final report was filed before the same court and pending trial as C.C.No.412 of 2006. Crime No. 71/2006 before the Marayoor Police Station was registered for the offences punishable under Sections 143, 147, 148, 323, 324, 294(b), 506(11), 308 read with 149 I.P.C. There, the allegation is that the accused and 18 others formed themselves into an unlawful assembly, abused and assaulted the complainant and inflicted

bodily injuries and attempted to commit culpable homicide. On investigation, it is revealed that the offence under Section 308 I.P.C. was not committed by the accused and the case is still pending. Similarly, Crime No.120/06 of Marayoor Police Station is registered for the offences punishable under Sections 160, 143, 144, 147, 148, 427 read with Section 149 I.P.C. for which occurrence takes place on 13.9.06. In this case, the allegation is that the detenu along with 75 others formed themselves into an unlawful assembly and formed into two factions fighting between them with deadly weapons in the public place. The investigation is going on in that case and the detenu is the 13th accused therein. Crime No.121/2006 registered in the Marayoor Police Station was for offences under Sections 143, 247, 148, 324 read with 149 I.P.C. There also the occurrence had taken place on 13.9.2006. Thus a crime is registered on the allegation that the detenu and 30

others formed themselves into an unlawful assembly and assaulted the complainant and inflicted bodily injuries. The detenu is the third accused in this case and the case is under investigation. Crime No.134/2006 was registered in the Marayoor Police Station for the offences under Sections 143, 147, 148, 307, 448, 506(ii), 149 I.P.C. which was reported on 14.10.2006. There, the allegation is that the detenu and others formed themselves into an unlawful assembly and assaulted one Murugan, Assistant Manager of Talayar Estate and inflicted bodily injuries with stick and attempted to commit murder. On investigation, it is revealed that offence under Section 307 of I.P.C. was committed by the accused and investigation is now pending.

6. Besides the above 8 criminal cases in which the I.P.C.offences are involved, yet other four Forest Act cases are pending against the detenu. O.R.No.50 of 2002 was registered in the Marayoor Forest Station

under Section 52 of the Kerala Forest Act, 1961 and Section 27(1)(e)(iii) and (iv) of the Kerala Forest (Amendment) Act, 1993. There, the date of occurrence is 26.3.2002 and the place of occurrence is in the Sandal Reserve Forest, Marayoor. The allegation is that the detenu and 14 other accused committed theft of sandal wood from Nachivayal Sandal Reserve. In this case, 600 Kgs. of sandal woods worth Rs.2,40,000/- and a jeep worth Rs.1,25,000/- were seized by the Forest Officials. The case is under investigation. O.R.No.202/02 was registered in the Marayoor Forst Station under Section 52 of the Forest Act, 1961 and Section 27(1)(e)(iii) and (iv) of the Kerala Forest (Amendment) Act, reported on 22.12.2004 from Nachivayal Sandal Wood Reserve. In this case, the detenu is accused No.6 along with five other accused and the case is under investigation. O.R.No.185/04 was registered in the Marayoor Forest Station under Section 52 of the Kerala Forest Act and

Section 27(1)(e)(iii) and (iv) of the Kerala Forest (Amendment) Act, 1993 reported on 22.12.2004 from Nachivayal Sandal Wood Reserve Forest. In this case, the allegation is that the detenu and five others committed theft of sandal wood of 120 Kgs. worth Rs.48,000/- from the Reserve Forest and the case is under investigation. Another case is O.R.No.187/04 which was registered in the Marayoor Forest Station under Section 52 of the Kerala Forest Act, 1961 and Section 27(1)(e)(iii)and (iv) of the Kerala Forest Act (Amendment) Act, 1993, occurred on 23.12.2004 from Nachivayal Sandal Reserve Forest. The investigation in that case is going on and the detenu and five other accused are involved in the theft of sandal wood from the Sandal Reserve Forest.

7. Thus, the counter affidavit disclosed that the Superintendent of Police, Idukki has reported that the detenu is a potential criminal and if he remains at large,

he is likely to indulge or abet the commission of serious offences breaking the peace and tranquility of the area and create a feeling of insecurity among the public. The counter affidavit further says that on examination and evaluation of the report of the Superintendent of Police, the third respondent has satisfied that the detenu Sri.Vysali @ Tamil Selvan is a “Known Rowdy” and if he remains at large, he would indulge in anti-social activities which would directly or indirectly cause harm, danger or alarm or a feeling of insecurity among the general public or residents of Pambanmala area or result in grave or widespread danger to life/public health in that area and hence the third respondent has issued Ext.P1 detention order in exercise of powers conferred on him under Section 3(1) and 3(2) of the KAAPO,2007 along with grounds of detention. Accordingly, the Superintendent of Police, Idukki was directed to take the detenu in custody and to send him

to Viyyur Central Jail. It is also stated in the affidavit that direction was also issued to comply with all procedures prescribed for effecting arrest and serve copies of the detention order and the grounds on the detenu and to obtain his acknowledgment to that effect. Ext.R3(a) is the copy of memo dated 16.7.2007 for executing the detention order. In Ext.R3(a), it is specifically stated that the detention order is not valid after 10 days unless the same is confirmed by the Government within that period. Thus, according to the counter, the detenu was arrested by the Circle Inspector of Police on 8.8.2007 at 4.30 pm and he was taken to Viyyur Central Jail and detained there from 9.8.2007 onwards. Exts.R3(b) and R3(c) are produced along with the counter affidavit from where it can be seen that the detenu acknowledged the receipt of that documents and the contents thereon. It is also clear from Ext.R3(b) and R3(c) that the Officer who served the order and grounds

of detention on the detenu has read over, translated and explained the same to him. In the counter affidavit, it has been specifically stated that the detenu can also read and understand Malayalam. By producing Ext.R3 (d) which is a Government order by which the Government has confirmed the detention order stating that the matter was reported to the Additional Chief Secretary to Government and consequently, the Government has also confirmed the detention order issued by the third respondent. It is also stated in the counter affidavit that the information was received by the third respondent through the Superintendent of Police from the S.H.O., Thodupuzha and hence according to the third respondent, the consideration of such information from the Superintendent of Police supported by connected records was in strict compliance of the mandates of Section 3 of the KAAPO, 2007. It is also specifically denied the allegation taken in ground

'G' that the third and second respondents have not applied their mind while issuing the detention order.

8. We have heard elaborately Mr.A.Mohammed, learned counsel for the petitioner as well as Mr.K.Raveendranath, Special Government Pleader and the Liaison Officer.

9. One of the main grounds argued by learned counsel for the petitioner is that the detenu will not come within the definition of Section 2(p) of the 'Known Rowdy'. According to him, Section 2(t)(i) and (ii) are not at all attracted. In case of Section 2(p)(iii), there is no report or information to attract the above provision. The learned counsel very much argued that even in the counter affidavit, there is no statement or claim that Section 2(p)(iii) is attracted in the case of detenu. According to the counsel, there must be a finding by a competent Police Officer or other competent authority on investigation or enquiry on complaints initiated by

persons other than Police Officers that the detenu has committed offences in three separate instances not forming part of the same transaction, any offence mentioned in sub-section (t) of Section 2. The learned Government Pleader has submitted that no such contention has been raised in the writ petition and therefore, the petitioner is not entitled to get a relief on the above ground. On a reading of the materials produced along with the case file and the documents marked in the writ petition as well as in the counter affidavit, it can be seen that the detention order refers to criminal cases and Forest Act cases which are sufficient to bring the detenu within the definition of term “Known Rowdy” as defined in KAAPO, 2007. It is true that in crime Nos.71/2006, 120/2006, 121/2006 and crime No.134/2006, so far, charge sheets have not been filed. Nature of offences involved in those crimes is very grave and heinous. The materials furnished

show that the Investigating Officer has already collected convincing evidences in those cases and on the basis of such materials and evidence, the Investigating Officer has already found that the detenu has committed the offences. Final report in those cases could not have been filed before the court since certain accused are absconding and it was, in such situation, the filing of the final report is prolonged. Merely because charge sheet has not been filed, it cannot be held that the Investigating Officer or the Police Officer or other authority has not found the accused or the detenu guilty. Formation of opinion, regarding the sufficiency of evidence and materials to proceed against the accused/detenu and that the accused/detenu has committed the offence is a stage which is a part of investigation immediately prior to the stage of filing final report. In the present case as stated above, the Investigating Officer has already found that the detenu

is guilty in those crime cases after investigation. Therefore, the contention raised by the counsel for the petitioner that section 2(t)(p)(iii) is not attracted in the case is not acceptable. It is on the basis of the above factual situation and the materials on records that the third respondent has formed an opinion and he had satisfied that the detenu was indulging in antisocial activities and commission of offence like theft of forest produce etc. According to the third respondent, his conduct is generally insecure among the general public especially those residing in Pambanmala area. It is also relevant to note that the grounds for detention refers to 8 criminal cases registered for offences under the Penal Code and four Forest Act offences including the theft of sandal wood from Marayoor Reserve Forest which can be treated as public property. At this juncture, it is relevant to note that there are two cases referred in the detention order namely, Crime Nos.7/2003 and 83/2003

of Marayoor Police Station on the basis of which the Judicial First Class Magistrate's Court, Devikulam took cognizance and instituted the cases as C.C.Nos.487/03 and 394/2004 respectively which resulted in acquittal and therefore, those cases will not come within the purview of Section 2(t)(p)(iii) of the KAAPO,2007 and therefore, the detenu cannot be termed as a 'Known Rowdy'. But the remaining cases would show that the detenu will come within the definition of 'Known Rowdy' and therefore, the detention order cannot be set aside.

10. Yet another contention raised by counsel for the petitioner is that the detention order was issued without application of mind by the third respondent, the detaining Officer. In order to substantiate the above contention, it is pointed out that the Police has already reported that Section 307 of I.P.C. is not attracted in the case of detenu and even according to the Police, no offence under Section 307 is charged against the

detenu. But, it is pointed out that in the detention order itself that "the above said Vaisali @ Taml Selven is involved in several criminal cases including one attempt to commit murder" whereas even according to the Police, no offence under Section 308 is disclosed against the detenu connecting with Crime No.71/06 of Marayoor Police Station. Therefore, according to the counsel for the petitioner, it is one of the instances showing the non-application of mind by the detaining authority. But the learned Government Pleader points out that in the report itself, it is stated that on investigation, it was revealed that the offence under Section 308 I.P.C,. was not committed by the accused. On the strength of the above statement contained in the counter affidavit in para 5, it is stated that that has been deleted and while issuing Ext.P1 order, the detaining authority was aware of the above fact and therefore, it cannot be said that there was no application of mind.

11. Another point argued by counsel for the petitioner that Tamil version of Ext.P1 and the grounds are not furnished to the detenu and therefore, the order of detention is liable to be set aside in the light of the decisions reported in **Surjeet Singh** v. **Union of India** (1981 SCC (Cri) 535), **Mrs.Tsering Dolkar** v. **Administrator, Union Territory of Delhi and others** 1987 SCC (Crl) 275, and **Hari Mohan Mandal** v. **State of Jharkhand** [2004 SCC.(Cri) Suppl.187]. In the counter affidavit, it is stated that the detenu has studied up to 10th standard and he is aware of the English language, Malayalam as well as Tamil. In the counter affidavit, by producing Exts.R3(b) and (c), the third respondent has stated that the Officer who served the order and ground of detention on the detenu has read over, translated and explained the same to the detenu. It is also stated in the counter affidavit that the detenu can also read and understand Malayalam. It is also

pertinent to note that though the name of the detenu is Vaisali @ Tamil Selvan, he is not totally strange to Kerala. Even according to the averments and claims contained in the first paragraph of the writ petition it can be seen that the detenu is permanently settled at Marayoor in Kerala along with his wife, the petitioner who is a Member of a local Grama Panchayath. Hence it cannot be said that the detenu is not familiar with Malayalam. From the above, it appears to us that the grounds raised by the detenu are faint.

12. The counsel for the petitioner very much argued that though a representation was filed before the Advisory Board, the representation is not disposed of by the Advisory Board. The learned Government Pleader made available to us the back files connected with the above case and also submitted that the Advisory Board in exercise of its power under Section 10(1) of the KAAPO 2007 has formed an opinion of the Board

pursuant to the reference made to the Board under Section 9 of the KAAPO, 2007. On a perusal of the opinion of the Advisory Board, it is seen that the detenu has not filed any representation before the Board or the Government, but the detenu was heard by the Advisory Board in person on 4.10.2007 at the Office of the Board at Ernakulam. The order of the Board contained what spoken to by the detenu before the Advisory Board. By an elaborate order, the Advisory Board came into a conclusion that the authorised officer is justified in passing the order of detention to prevent the detenu from indulging in further prejudicial activities. Thus, under the heads (a), the Board is of the opinion that there is sufficient reason to detain Sri.Vaisali @ Tamil Selvan, the detenu as on 8.8.2007 and (b) there is sufficient reason to continue the detention of the detenu for the maximum period of six months from the date of detention.

13. In the light of the above discussion and on the basis of the materials perused by us, we are of the view that Ext.P1 detention order issued by the third respondent is perfectly legal and valid and the petitioner has not made out any case to interfere with the same. Therefore, there is no merit in the writ petition and accordingly, the same is dismissed.

P.R.RAMAN,
Judge

V.K.MOHANAN,
Judge

Mbs/

V.K.MOHANAN, J.

O.P.NO. OF 2001

J U D G M E N T

DATED: -0-2007